

Application No. 10/603,376
Response to Office Action

Customer No. 01933

R E M A R K S

Reconsideration of this application, as amended, is respectfully requested.

RE: ALLOWABLE SUBJECT MATTER

The Examiner's allowance of claims 19, 20, 23 and 24 is respectfully acknowledged.

RE: THE PRIOR ART REJECTION

Claims 21 and 22 were rejected under 35 USC 102 as being anticipated by USP 6,487,353 ("Kato et al").

It is respectfully submitted, however, that Kato et al is not a proper reference against the present application under 35 USC 102(e).

As recognized by the Examiner, Kato et al is a continuation of application No. 09/586,966 (now USP 6,256,440), which is a continuation-in-part of international application PCT/JP98/05182, filed November 18, 1998. Therefore, as also recognized by the Examiner the effective prior art date of USP 6,487,353 is determined based on the version of 35 USC 102(e) which was in effect prior to the amendment thereof by the American Inventors Protection Act ("pre-AIPA 35 USC 102(e)").

As shown in the attached copy of pre-AIPA 35 USC 102(e), a patent is a proper reference against an application if the patent

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was granted on an international application (filed before November 29, 2000) by another who has fulfilled the requirements of 35 USC 371(c), paragraphs (1), (2) and (4) before the invention by the applicant for patent. And 35 USC 371(c), paragraphs (1), (2) and (4) in turn require that the national phase fee, an English language version of the application, and an oath or declaration be filed in the USPTO.

It is respectfully pointed out that the date on which Kato et al fulfilled the equivalent of the requirements of 35 USC 371(c), paragraphs (1), (2) and (4) was the date on which the continuation-in-part application No. 09/586,966 was filed in the USPTO on June 5, 2000.

Accordingly, it is respectfully submitted that Kato et al is only a proper reference against the present application as of June 5, 2000, and it is respectfully pointed out that this date is after the August 20, 1999, and December 22, 1999 priority dates of the present application. And it is noted that accurate English translations of the Japanese priority documents have already been submitted with the Response filed October 27, 2004 in order to show that the present application is entitled to the priority dates of August 20, 1999, and December 22, 1999.

In view of the foregoing, it is respectfully submitted that Kato et al is not a proper reference against the present

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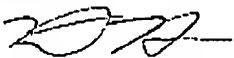
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application, and it is respectfully requested that the rejection in view of Kato et al be withdrawn.

Accordingly, allowance of claims 21 and 22, along with allowed claims 19, 20, 23 and 24, and the passing of this application to issue are respectfully solicited.

If the Examiner has any comments, questions, objections or recommendations, the Examiner is invited to telephone the undersigned at the telephone number given below for prompt action.

Respectfully submitted,


Douglas Holtz
Reg. No. 33,902

Frishauf, Holtz, Goodman & Chick, P.C.
767 Third Avenue - 25th Floor
New York, New York 10017-2023
Tel. No. (212) 319-4900
Fax No. (212) 319-5101

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provement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

(July 19, 1952, ch. 950, §1, 66 Stat. 797.)

§ 102 Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless—

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

(c) he has abandoned the invention, or

(d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent, or

(e)* *The invention was described in —*

* Ed. Note: Pursuant to §4508 of Pub. L. 106-113, the italicized material will take effect one year after the Nov. 29, 1999 date of enactment and shall apply to all applications filed under §111 on or after that date and all applications complying with §371 that resulted from international applications filed on or after that date. Upon taking effect, the italicized provisions will supersede the non-italicized material appearing in subsection (e).

35 U.S.C. § 102